



**CITY OF SUNNYVALE
REPORT
Planning Commission**

December 13, 2004

SUBJECT: **2004-0209 - Sobrato Interests** [Applicant/Owner]:
Application for related proposals on a 9.34-acre site located
at **1150 Morse Avenue and 1139 Karlstad Drive** in an R-
4/PD (High Density Residential/Planned Development)
Zoning District. (APNs: 110-14-174 and 110-14-197):

Motion **Special Development Permit** to allow 271 condominium
units where apartments were previously approved;

Motion **Tentative Map** to subdivide two lots into 271 condominium
lots and associated common lots

REPORT IN BRIEF

Existing Site 123 completed apartments and one industrial
Conditions building

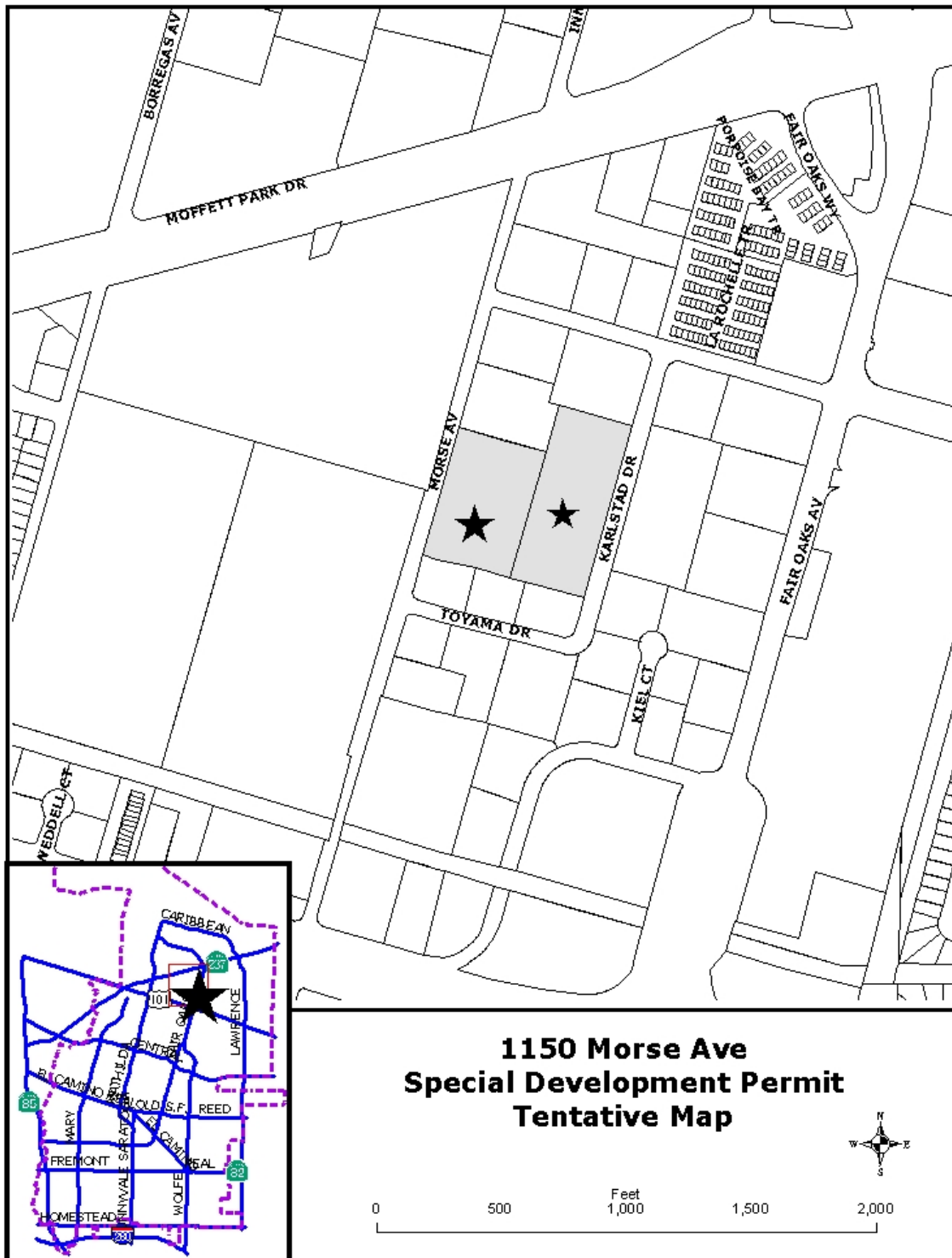
Surrounding Land Uses

North	Industrial
South	Industrial
East	Mobile homes and apartments
West	Townhomes under construction

Issues Timeline for conversion
Below market rate units

Environmental A previous Negative Declaration was approved for this
Status project.

Staff Approve with Conditions
Recommendation



PROJECT DATA TABLE

	<u>EXISTING</u>	<u>PROPOSED</u>	<u>REQUIRED/ PERMITTED</u>
General Plan	Industrial to Residential (Medium-High Density)	Same	Same
Zoning District	M-S/ R-3/ITR/PD	R-4/PD	---
Lot Size (s.f.)	Morse: 190,531 Karlstad: 216,711 Total: 407,242	Same	8,000 min. (1,200 per dwelling unit)
No. of Units	123	271	338 max.
No. of BMRs	27	34	34 min. for ownership
Density (units/acre)	N/A	29 du/acre	36 max.
Bedrooms/Unit	N/A	Morse: (56) 1-bdrms (67) 2-bdrms Karlstad: (70) 1- bdrms (78) 2-bdrms	N/A
Unit Sizes (s.f.)	N/A	1-bdrm: 720 2-bdrm: 1147 - 1372	N/A

ANALYSIS**Description of Proposed Project**

This proposal creates 271 condominiums in a previously approved apartment complex with common lots for all common areas including parking, landscaping and recreational facilities. The creation of condominium lots allow individual units to be sold separately.

Background

This item originally went to Planning Commission on November 22, 2004. The application was continued in order to have the applicant present to respond to questions of the Commission.

Since approval of the 271 apartment unit complex, 123 apartments along Morse Avenue have been completed. The second half of the project currently remains as an industrial building.

Previous Actions on the Site: The following table summarizes previous planning applications related to the subject site.

File Number	Brief Description	Hearing/ Decision	Date
2002-0976	Rezone to R-4/PD (High-Density Residential/Planned Development) Special Development Permit to allow the development of a 3-story, 271 apartment unit complex.	Approved by City Council	3/18/03
2001-0116	General Plan Amendment to allow Medium to High Density Residential (18-36 du/acre)	Approved by City Council	6/25/02
1999-0190	Futures Sites Study creating Industrial-to-Residential (ITR) areas.	Approved by City Council	10/5/93

Environmental Review

A Negative Declaration was previously prepared in compliance with the California Environmental Quality Act provisions and City Guidelines. This project proposal is a minor change to the project description which would not create any additional environmental impacts above those already considered.

Special Development Permit

Use: This project is a change in use from rental to ownership. It does not affect any of the site design, architecture, or parking approvals from the previous Special Development Permit. This project affects the previous approval in three ways:

1. Increases the required below-market rate units (BMRs) from 10% to 12.5% for a total of 34 units.
2. Triggers the Condominium Conversion section of the Subdivision Map Act when apartments are ultimately sold to individuals.
3. Requires the filing of CC&Rs with the final map.

The applicant states that this condominium map is being filed primarily for financing reasons, and they plan to operate the project as an apartment complex for the near future. However, it is possible for the project to convert to condominiums at any time after the filing of this map. For this reason, staff has created a legal agreement with the developer to ensure certain procedural requirements (such as increased BMRs, compliance with Condominium Conversion section) to be met at the time the owner decides to sell the units individually. (Attachment D and Condition # 1C)

Tentative Map

Description of Tentative Map: The map provides for 271 condominiums with common areas enclosing all of the recreational areas, parking and landscaping. CC&Rs will need to be filed describing the access and maintenance agreements for the future homeowner's association (see Condition #4).

The Final Map shall be applied for in phases. Phase I of the project is complete and a Final Map may be applied for this phase of the project. Phase 2 of the map must wait for the existing industrial building to be demolished.

Conclusion

Compliance with Development Standards/Guidelines: This project meets all applicable development standards and guidelines.

Sunnyvale Municipal Code Section 19.70.020 requires condominium conversions to be approved only when vacancy rates have exceeded 3% for more than a year. State law supercedes this requirement and the City can no longer limit conversions. However, Sunnyvale has experienced a high vacancy rate in recent years. The January 2004 vacancy survey, 6% of apartment complexes in Sunnyvale are vacant. The two prior semi-annual surveys indicated a vacancy rate of 5.94% in December 2002 and 5.81% in June 2003.

This is the sixth consecutive Vacancy Survey over a period of thirty months indicating a vacancy rate of 3% or more.

Sunnyvale Municipal Code sections 19.70.040 and 19.70.050 state the minimum requirements for information that must be submitted prior to a condominium conversion and tenant/buyer protection measures and building standards for the units. This project is subject to those requirements (Condition of Approval #3).

Expected Impact on the Surroundings: This change in use will have no impact on the surroundings beyond what was previously evaluated in the original Special Development Permit.

Fiscal Impact

This project is subject to the Transportation Impact Fee and Park In-Lieu Fee. The subdivision code requires park dedication or an in-lieu fee. The first phase of the project paid a park in-lieu fee in accordance with the requirements of the zoning code. The zoning code exempts below market rate units; the subdivision code does not. For Phase I the fee would be assessed for the current number of below market rate units. Phase 2 would need to pay the fee for all units.

Findings, General Plan Goals and Conditions of Approval

Staff was able to make the required Findings based on the justifications for the Special Development Permit and Tentative Map.

- Findings and General Plan Goals are located in Attachment A.
- Conditions of Approval are located in Attachment B.

Public Contact

Notice of Public Hearing	Staff Report	Agenda
<ul style="list-style-type: none">• Published in the <i>Sun</i> newspaper• Posted on the site• 651 notices were mailed to the property owners and tenants within 300 ft. of the project site	<ul style="list-style-type: none">• Posted on the City of Sunnyvale's Website• Provided at the Reference Section of the City of Sunnyvale's Public Library	<ul style="list-style-type: none">• Posted on the City's official notice bulletin board• City of Sunnyvale's Website• Recorded for SunDial

Alternatives

1. Approve the Special Development Permit and Tentative Map with attached conditions.
2. Approve the Special Development Permit and Tentative Map with modified conditions.
3. Deny the Special Development Permit and Tentative Map.

Recommendation

Alternative 1.

Prepared by:

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Project Planner

Reviewed by:

Fred Bell
Principal Planner

Reviewed by:

Trudi Ryan
Planning Officer

Attachments:

- A. Recommended Findings
- B. Recommended Conditions of Approval
- C. Tentative Map and Utility Plan
- D. Draft Agreement for Initial Rental of Condominium Development Including Affordable Housing Requirements.

Recommended Findings - Special Development Permit

Goals and Policies that relate to this project are:

Land Use and Transportation Element Policy C2.2 – *Encourage the development of ownership housing to maintain a majority of housing in the city for ownership choice.*

Housing and Community Revitalization Sub-element Policy D.4. – *Provide a mixture of owner and rental housing opportunities by allowing conversion from apartments to condominiums or cooperatives when a benefit to the overall city housing situation can be shown and when the citywide vacancy rate for rental units warrant.*

1. The proposed use attains the objectives and purposes of the General Plan of the City of Sunnyvale as the project increases the amount of ownership housing in the City and complies with the condominium conversion ordinance of the City.
2. The proposed use ensures that the general appearance of proposed structures, or the uses to be made of the property to which the application refers, will not impair the orderly development of, or the existing uses being made of, adjacent properties. The change in use will not affect the previously approved project and required CC&Rs and Condominium Conversion sections of the Subdivision Map Act will ensure the site is adequately maintained and the needs of renters are addressed.

Recommended Findings - Tentative Map

This Tentative Map is consistent with the Goals and Policies of the General Plan. If any of the following findings can be made, the Planning Commission should deny approval of the Tentative Map.

1. That the subdivision is not consistent with the General Plan.
2. That the design or improvement of the proposed subdivision is not consistent with the General Plan.
3. That the site is not physically suitable for the proposed type of development.

4. That the site is not physically suitable for the proposed density of development.
5. That the design of the subdivision or proposed improvements is likely to cause substantial environmental damage or substantially and avoidably injure fish or wildlife or their habitat.
6. That the design of the subdivision or type of improvements is likely to cause serious public health problems.
7. That the design of the subdivision or the type of improvements will conflict with easements, acquired by the public at large, for access through or use of property within the proposed subdivision.
8. That the map fails to meet or perform one or more requirements or conditions imposed by the "Subdivision Map Act" or by the Municipal Code

Staff was not able to make any of the above findings, and recommends approval of the Tentative Map.

Recommended Conditions of Approval - Special Development Permit

In addition to complying with all applicable City, County, State and Federal Statutes, Codes, Ordinances, Resolutions and Regulations, Permittee expressly accepts and agrees to comply with the following conditions of approval of this Permit:

Unless otherwise noted, all conditions shall be subject to the review of approval of the Director of Community Development.

1. GENERAL CONDITIONS

- A. Project shall be in conformance with the plans approved at the public hearing. Minor changes may be approved by the Director of Community Development; major changes may be approved at a public hearing.
- B. Comply with all requirements of previously approved Special Development Permit File Number 2002-0976.
- C. An agreement in substantial conformance with Attachment D to the staff report to Planning Commission on November 22, 2004 with the City shall be signed and recorded against the property prior to the Final Map. This agreement provides for the tenant protection in future condominium conversion and provision for below market rate units.
- D. The developer shall notify the City at least 18 months prior to the individual sale of units.
- E. The Conditions of Approval shall be reproduced on a page of the plans submitted for a Building permit for this project.
- F. The Special Development Permit shall be null and void two years from the date of approval by the final review authority at a public hearing if the approval is not exercised, unless a written request for an extension is received prior to expiration date.
- G. Any expansion or modification of the approved use shall be approved by separate application at a public hearing by the Planning Commission.
- H. Individual buildings shall not be sold separately, or if the sale of any building shall be anticipated, all requirements of the Subdivision Ordinance in effect at the time of the sale shall be compiled with in full prior to such sale.

2. BMR (BELOW MARKET RATE UNITS)

- A. Comply with Below Market Rate Housing (BMR) requirements as noted in SMC 19.66.
- B. The project will provide 34 Below Market Rate ownership dwelling units in compliance with SMC 19.66.
- C. The developer shall submit a site plan to the Housing Officer for review. The plan will include a description of the number, type, size and location of each unit on the site. The Housing Officer will then determine the specific units to be obligated as Below Market Rate (BMR) unit(s).
- D. Prior to issuance of a building permit, the developer shall execute a Development Agreement with the City to establish the units. The rental/sale price of the BMR unit(s) is established at the time of the execution of the Development Agreement.
- E. All BMR dwelling units shall be constructed concurrently with non-BMR units, and shall be dispersed throughout the property and shall reflect the range in numbers of bedrooms provided in the total project and shall not be distinguished by exterior design, construction or materials.
- F. Sixty days (60) days prior to the estimated occupancy date, the developer shall notify the Housing Division of the BMR units to be available.
- G. BMR Ownership Program - Developer and Buyer to execute "Addendum to Purchase Offer" prior to Occupancy Permit and provide copy to City.
- H. Ownership Units - Prior to Close of Escrow, a Deed of Trust between the City and the Buyer of the BMR unit shall be recorded to establish resale and occupancy restrictions for a 30-year period.
- I. The original sale/rental price of BMR dwelling units shall comply with sales prices established by the City, which is revised annually.
- J. Below Market Rate dwelling units shall be offered for sale/rent only to persons qualified under the terms described in SMC 19.66.040 and 19.66.050 and described more fully in the Administrative Guidelines.
- K. Resale of BMR dwelling units shall comply with procedures set forth in SMC 19.66.060.
- L. In the event of any material breach of the Below Market Rate Program requirements and conditions, the City may institute appropriate legal actions or proceedings necessary to ensure compliance.

- M. In the event that any of the Below Market Rate dwelling units or a portion thereof is destroyed by fire or other cause, all insurance proceeds there from shall be used to rebuild such units. Grantee hereby covenants to cause the City of Sunnyvale to be named additional insured party to all fire and casualty insurance policies pertaining to said assisted units.

3. CONDOMINIUM CONVERSION REQUIREMENTS

- A. Prior to conversion, the applicant shall submit all information listed under 19.70.040(d) Use Permits and Special Development permits at least 18 months prior to the individual sale of units for review and approval by the Director of Community Development.
- B. Prior to conversion, the applicant shall demonstrate compliance all requirements of 19.70.050 Minimum Requirements, which includes provisions for Tenant Protection, Buyer Protection, and Site Improvements and Amenities.

4. CC&R's (CONDITIONS, COVENANTS AND RESTRICTIONS)

- A. Any proposed deeds, covenants, restrictions and by-laws relating to the subdivision are subject to review and approval by the Director of Community Development and the City Attorney.
- B. The developer/Owner shall create a Homeowner's Association that comports with the state law requirements for Common Interest Developments. Covenants, conditions and restrictions (CC&Rs) relating to the development are subject to approval by the City Attorney and Director of Community Development prior to approval of the Final Map. In addition to requirements as may be specified elsewhere, the CC&R's shall include the following provisions:
1. Membership in and support of an association controlling and maintaining all common facilities shall be mandatory for all property owners within the development.
 2. The homeowners association shall obtain approval from the Director of Community Development prior to any modification of the CC&R's pertaining to or specifying the City.
 3. The developer shall maintain all utilities and landscaping for a period of three years following installation of such improvements or until the improvements are transferred to a homeowners association, following sale of at least 75% of the units, whichever comes first.
 4. The Conditions of Approval of this Special Development Permit.

5. The CC&Rs shall contain the following language:
6. "Right to Remedy Failure to Maintain Common Area. In the event that there is a failure to maintain the Common Area so that owners, lessees, and their guests suffer, or will suffer, substantial diminution in the enjoyment, use, or property value of their Project, thereby impairing the health, safety and welfare of the residents in the Project, the City, by and through its duly authorized officers and employees, will have the right to enter upon the subject Property, and to commence and complete such work as is necessary to maintain said Common Area. The City will enter and repair only if, after giving the Association and Owners written notice of the failure to maintain the Common Area, they do not commence correction of such conditions in no more than thirty (30) days from the giving of the notice and proceed diligently to completion. All expenses incurred by the City shall be paid within thirty (30) days of written demand. Upon a failure to pay within said thirty (30) days, the City will have the right to impose a lien for the proportionate share of such costs against each Lot in the Project.
7. It is understood that by the provisions hereof, the City is not required to take any affirmative action, and any action undertaken by the City will be that which, in its sole discretion, it deems reasonable to protect the public health, safety and general welfare, and to enforce it and the regulations and ordinances and other laws.
8. It is understood that action or inaction by the City, under the provisions hereof, will not constitute a waiver or relinquishment of any of its rights to seek redress for the violation of any of the provisions of these restrictions or any of the rules, regulations and ordinances of the City, or of other laws by way of a suit in law or equity in a court of competent jurisdiction or by other action.
9. It is further understood that the remedies available to the City by the provision of this section or by reason of any other provisions of law will be cumulative and not exclusive of the maintenance of any other remedy. In this connection, it is understood and agreed that the failure to maintain the Common Area will be deemed to be a public nuisance and the City will have the right to abate said condition, assess the costs thereof, and cause the collection of said assessments to be made on the tax roll in the manner provided by appropriate provisions of the Sunnyvale Municipal Code or any other applicable law.

10. No Waiver. No failure of the City of Sunnyvale to enforce any of the covenants or restrictions contained herein will in any event render them ineffective.
11. Third-Party Beneficiary. The rights of the City of Sunnyvale pursuant to this Article will be the rights of an intended third party beneficiary of a contract, as provided in Section 1559 of the California Civil Code, except that there will be no right of Declarant, the Association, or any Owner(s) to rescind the contract involved so as to defeat such rights of the City of Sunnyvale.
12. Hold Harmless. Declarant, Owners, and each successor in interest of Declarant and said Owners, hereby agree to save, defend and hold the City of Sunnyvale harmless from any and all liability for inverse condemnation which may result from, or be based upon, City's approval of the Development of the subject Property."

5. FEES

- A. Pay Traffic Impact fee prior to issuance of a Building Permit.
- B. Pay Park In-lieu fees prior to approval of the Final Map. (SMC 18.10)

6. TENTATIVE MAP

- A. The Tentative Map shall be valid for a period of two years, measured from the date of approval by the final review authority.
- B. The Tentative Map shall be applicable only in conjunction with a valid Special Development Permit.
- C. Full development fees shall be paid for each project parcel or lot shown on Final Tract Map and the fees shall be calculated in accordance with City Resolutions current at the time of payment.